

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ENVIROTECH CORPORATION,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB Nos. 78-255 and 79-60

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

These matters, by agreement of the parties, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith and David Akana, presiding officer, at a formal hearing in Lacey, Washington on April 20, 1979.

Appellant appeared by C. Brent Patten, its Contract Administrator; respondent appeared by its attorney, James D. Ladley.

Respondent moved to dismiss five of the six civil penalties in one matter, PCHB No. 78-255, on the ground that appellant failed to timely file its appeal as to each of the penalties. The record showed that the

NC/LB

1 civil penalties dated August 18, 1978, October 6, 1978 (2), October 12, 197
2 and October 19, 1978 were appealed to this Board more than 30 days
3 after appellant's receipt thereof. Consequently, respondent's motion
4 as to such civil penalties was granted for lack of jurisdiction of
5 this Board to consider those appeals. The remaining civil penalty in
6 PCHB No. 78-255 and a civil penalty in PCHB No. 79-60, consolidated herein
7 by agreement, were thereafter heard.

8 Witnesses were sworn and testified. Exhibits were admitted. From
9 testimony heard and exhibits examined, the Pollution Control Hearings
10 Board makes these

11 FINDINGS OF FACT

12 I

13 Respondent, pursuant to RCW 43.21B. 260, has filed with this
14 Hearings Board a certified copy of its Regulation I containing
15 respondent's regulations and amendments thereto. Official notice
16 thereof is hereby taken.

17 II

18 Appellant, by contract, operates the Westside Sewage Treatment
19 Plant and the Eastside Sewage Treatment Plant in Vancouver, Washington,
20 for the City of Vancouver.

21 III

22 On November 3, 1978 a trained and experienced inspector employed by
23 respondent detected a strong odor in the vicinity of appellant's
24 Eastside Sewage Treatment Plant. He checked his scentometer
25 to be sure it was functioning and followed the odor upwind. He
26 determined the source to be the Eastside Sewage Treatment Center, and

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 took a reading of 170 dilution thresholds, or number four on his
2 scentometer, between 11:11 a.m. and 11:37 a.m., approximately 1/2 mile
3 northwest of appellant's Eastside Plant, adjacent to a motel in a
4 commercial area. Respondent's inspector also detected sewage visible on
5 the ground at the plant. The inspector left a field notice of violation
6 at appellant's office at Westside Sewage Treatment Plant. Subsequently,
7 respondent issued to appellant Notice of Violation and Civil Penalty in
8 the amount of \$250; this notice is the subject matter of PCHB No. 78-255.

9 IV

10 On March 9, 1979, while respondent's inspector was conducting a
11 routine check of the industrial area in Vancouver, he detected a
12 burned odor typical of a heat treatment and burning process of
13 sewage. After respondent's inspector checked his scentometer, he
14 took two readings between 1:15 p.m. and 1:32 p.m., which yielded a
15 170 dilution threshold, or number four on the scentometer. The
16 reading was taken approximately 200 yards northeast of the Westside
17 Sewage Treatment Plant, adjacent to the industrial area. Respondent's
18 inspector determined the source of the odor to be the Westside Sewage
19 Treatment Plant. The inspector gave a field notice of violation
20 to the plant manager; a Notice of Violation and Civil Penalty of
21 \$250 was subsequently issued and is the subject matter of PCHB No.
22 79-60.

23 V

24 Section 5.03 of respondent's Regulation II makes it unlawful
25 any person to allow, cause, let, permit or suffer the emission of
odorous gases from any source exceeding a scentometer No. 0 odor

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 strength or equivalent dilution in residential and commercial areas, or
2 exceeding a scentometer No. 2 odor strength or equivalent dilution
3 in all other land use areas. A violation of the section occurs when
4 two measurements made within a period of one hour, separated by at
5 least fifteen minutes, off the property surrounding the air
6 contaminant source, show that the specified limitations have been
7 exceeded, Section 2.04 provides that any person violating any of the
8 provisions of respondent's Regulation II shall incur a penalty up to \$250
9 per day per violation.

10 VI

11 Any Conclusion of Law hereinafter stated which is deemed to be
12 a Finding of Fact is here with adopted as such.

13 From these Findings, the Pollution Control Hearings Board
14 comes to these

15 CONCLUSIONS OF LAW

16 I

17 Appellant admits in its letter of appeal in PCHB No. 78-255
18 that odors were present at the time of the violation, but urges that
19 since odors have previously been present without receiving notices
20 of violation, considerations of equity demand that the fines be
21 lifted completely. The Board rejects this contention. The fact
22 that the appellant has previously violated the standards of Section 5.03
23 of Regulation II while escaping penalty does not excuse the incident
24 which prompted the Notice of Violation and Civil Penalty under appeal.

25 II

26 Appellant in its letter of appeal in PCHB No. 79-60 maintains

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

that if the odors were present, the responsibility lies with "another party," the City of Vancouver. The Board notes that the language of Section 5.03 of respondent's Regulation II speaks to those who "allow, cause, let, permit or suffer the emission of odorous gases" Since appellant, by contract with the City of Vancouver, operates both the Westside and the Eastside Sewage Treatment Plants, the Board considers that the appellant controlled the plants and so was properly held responsible for the emissions, although it may be that another would also have been cited or otherwise responsible to appellant for payment of the penalty.

III

Appellant was in violation of Section 5.03 of respondent's Regulation II on November 3, 1978 and on March 9, 1979, and in view of the circumstances on each day, the civil penalties of \$250 each are reasonable.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeals are denied; the Notices of Civil Penalty, in the amount of \$250 each, totalling \$500, are sustained.

DONE at Lacey, Washington this 5th day of JUNE, 1979.

POLLUTION CONTROL HEARINGS BOARD

Dave J. Mooney
DAVE J. MOONEY, Chairman

David Akana
DAVID AKANA, Member

Chris Smith
CHRIS SMITH, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER